IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 25.10.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Habeas Corpus Petition No.855 of 2006

V.Jothi ... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Prohibition and Excise Department,
Fort St.George, Chennai-9.

2.The District Magistrate and
District Collector,
Coimbatore District, Coimbatore. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the records in detention order passed in Crl.M.P.No.18/V.P./2006/E4 dated 17.08.2006 on the file of the second respondent herein and set aside the same and direct the respondents to produce the body of the petitioner's husband Vinayagam, now confined in Central Prison, Coimbatore before this Court and set him at liberty.

For Petitioner : Mr.C. M. .Gunasekaran
for Mr.C.Ramkumar

For Respondents: Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.SATHASIVAM,J.)

The petitioner, who is the wife of the detenu, by name Vinayagam, who is detained as a ''Video Pirate" as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral

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Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order dated 17.08.2006, challenges the same in this Petition.

2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, the learned counsel for the petitioner submitted that in view of the fact that the pre-detention representation made by the petitioner dated 10.08.2006 submitted to the Collectorate/District Magistrate on 14.08.2006 during the Public Grievance Day was not considered, the same vitiates the detention order.

4. Elaborating the above contention, the learned counsel for the petitioner has placed a copy of the pre-detention representation dated 10.08.2006 as well as the due acknowledgement for presenting the same on 14.08.2006 in the office of the District Collector, Coimbatore. He also brought to our notice that the said point has been specifically taken as Ground 'd' in the affidavit filed in support of the above petition.

5. In the counter affidavit filed by the District Magistrate and District Collector, Coimbatore, while answering Ground 'd', it is stated that no such representation of the petitioner dated 10.08.2006 was received by the detaining authority and hence there was no occasion for the detaining authority for passing any order on the said petition.

6. In view of the production of the xerox copy of the representation dated 10.08.2006 as well as the proper acknowledgement issued by the office of the District Collector, Coimbatore, evidencing that the said representation was received on 14.08.2006, we are of the view that the stand taken by the second respondent, in his counter affidavit cannot be accepted. When representation was made on the Public Grievance Day, which was duly received and acknowledged by the office of the District Collector, it is but proper to place the same before the authority/person concerned for necessary action. No doubt, the learned Additional Public Prosecutor submitted that 15.08.2006 and 16.08.2006 were holidays being Independence Day and Krishna Jayanthi. It is not in dispute that the detention order was passed on 17.08.2006 and approved by the Government only on 21.08.2006. It is also not in dispute that till the detention order is approved by the Government, the detaining authority is free to consider and dispose of the representation made by the petitioner. In view of the abundant material available regarding the receipt of representation dated 10.08.2006 on 14.08.2006 by the office of the District Collector, Coimbatore, we are of the view that the detaining authority ought to have considered and disposed of the same and failure to do so, vitiates the detention order.

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7. Learned counsel for the petitioner, by drawing our attention to paragraph No.5 of the grounds of detention (Tamil version) submitted that there is no such subjective satisfaction on the part of the detaining authority in arriving imminent possibility of the detenu being coming out on bail and necessity for invocation of Act 14 of 1982. He pressed into service the following statement in paragraph No.5 which reads as under:

> "5/ மேலும் இவர் திருப்பூர் குற்றவியல் நீதித்துறை நடுவர் எண்.1 முன்பாக கு.ப.ம.எண்.8777/2006 என்ற எண்ணில் தாக்கல் செய்த ஜாமீன்மனு 09.08.2006ம் தேதி தள்ளுபடி செய்யப்பட்டுவிட்டது என்பதையும் நான் அறிவேன். மேலும் இதுபோன்ற வழக்குகளில் குற்றம் சாட்டப்பட்டவர்கள் இதே நீதிமன்றத்தாலோ அல்லது உயர்வ நீதிமன்றங்களாலோ சிறிது காலம் கழித்து ஜாமீனில் விடுவிக்கப்படலாம் என்பதையும் நான் அறிவேன்/
> "

8. As rightly pointed out, though in the English version of the grounds of detention, the detaining authority has arrived at subjective satisfaction, which is reflected in paragraph No.5 of the grounds of detention, a perusal of the very same paragraph in Tamil version of the grounds of detention does not lead to such inference. No doubt, the learned Additional Public Prosecutor has brought to our notice that by proceedings dated 22.08.2006, the District Magistrate and District Collector-Detaining authority has issued an amendment in respect of paragraph No.5, while arriving at subjective satisfaction. We verified the proceedings dated 22.08.2006. On a perusal of the subjective satisfaction, as referred in the English version before the amendment and after the amendment, we are of the view that the detaining authority was not clear and has not rectified the mistake, though he brought an amendment on 22.08.2006. As rightly pointed out by the learned counsel for the petitioner, only in the Tamil version of the grounds of detention, the subjective satisfaction is not properly reflected for detaining the detenu under Act 14 of 1982. Instead of amending the said portion in paragraph No.5 of the Tamil version of the grounds of detention, by proceedings dated 22.08.2006, an amendment was made in respect of paragraph No.5 of the English version of the grounds of detention which amply shows that the detaining authority has not understood the defect or error in the Tamil version of the grounds of detention. On this ground also, the detention order is liable to be quashed.

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9. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in connection with some other case or cause.

gms

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Secretary to Government, State of Tamil Nadu,
Prohibition and Excise Department, Fort St.George, Chennai-9.

2.The District Magistrate and District Collector, Coimbatore District, Coimbatore.

3. The Superintendent, Central Prison, Coimbatore.
(In duplicate for communication to detenu)

4. The Joint Secretary to Government, Public (Law and Order)
Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

GM(CO)
NM(08.11.2006)

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